

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

JEREMY ALLEN HOWELL, #10236-078	§	
VS.	§	CIVIL ACTION NO. 2:06cv295
UNITED STATES OF AMERICA	§	CRIM. NO. 2:03cr21(01)

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Charles Everingham, who issued a Report and Recommendation concluding that the motion to vacate, set aside or correct a sentence pursuant to 28 U.S.C. § 2255 should be denied. The Movant has filed objections.

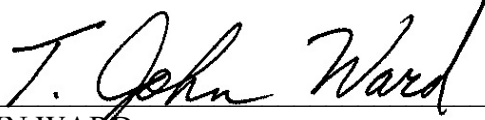
The Report of the Magistrate Judge, which contains his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Movant to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Petitioner are without merit.

It is noted that the Movant pled guilty in conjunction with a Plea Agreement. The Plea Agreement contained a waiver provision that included an agreement not to contest the sentence in a § 2255 proceeding. The Movant signed the Plea Agreement. The Report and Recommendation cited several Fifth Circuit opinions that have upheld waiver provisions. Such waivers should be enforced unless they or the plea were entered unknowingly and involuntarily due to ineffective assistance of counsel or when the sentence exceeds the maximum. In his objections, the Movant asserted that he was unaware of the maximum sentence, but the Plea Agreement signed by him clearly stated that the maximum sentence was Life imprisonment. The Movant argued that he should be entitled to relief in light of *United States v. Booker*, 543 U.S. 220 (2005). He raised the issue on

appeal, and the Fifth Circuit dismissed the appeal. Moreover, he may not obtain relief in a § 2255 proceeding based on *Booker*. See *United States v. Edwards*, 442 F.3d 258, 268 (5th Cir. 2006), *cert. denied*, 126 S.Ct. 2948 (2006); *United States v. Gentry*, 432 F.3d 600, 604-05 (5th Cir. 2005). The Movant's objections lack merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the motion to vacate, set aside or correct the Movant's sentence pursuant to 28 U.S.C. § 2255 is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. All motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this 17th day of September, 2007.



T. JOHN WARD
UNITED STATES DISTRICT JUDGE